
THE MISSOULA PLAN: A DEEPLY FLAWED PROPOSAL

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FUNDAMENTAL PROBLEMS WITH THE MISSOULA PLAN

- Under the Plan Consumers and Competitors Pay so that Incumbents' Revenues are Preserved and Enhanced.
- The Plan is Illegal, Improperly Intruding on State Authority and the 1996 Telecommunications Act's Competition Requirements.
- The Plan Harms Competition by Overriding the Competition Requirements of the 1996 Act.
- The Plan Overreaches, Addressing Issues not Closely Related to Inter-Carrier Compensation and Creating Needless Uncertainty.

Incumbents Win; Consumers and Competition Lose

- Interstate switched access charge reform has already driven down rates, leading to greater network efficiency and greatly reduced bypass opportunities.
- The Missoula Plan looks backwards, locking-in revenues for incumbents (which are declining) at past year levels. In other words, the plan is more than “revenue-neutral” for incumbents; they make money.
- In contrast, consumers and competitors are losers and pay in various ways to keep the incumbents more than whole. How?
 - ❑ Proposed SLCs are discriminatory;
 - ❑ Proposed Restructuring Mechanism is discriminatory;
 - ❑ Transiting rates are deregulated before markets are competitive;
 - ❑ Interconnection Agreements are effectively overridden.

The Plan Severely and Illegally Diminishes State Authority

- The “carrot and stick” proposals in the Plan to force intrastate switched access rates lower are contrary to basic state authority set forth in the Communications Act and the US Supreme Court’s *Louisiana PSC vs. FCC* decision.

In the *Louisiana* decision, the court explained that Section 152(b) contained “express jurisdictional limitation on FCC power” and that “[b]y its terms, this provision fences off from FCC reach or regulation intrastate matters.”

- The Plan also runs counter to state authority explicitly provided for in the pro-competition sections (251/252) of the 1996 Act.

The Plan Alters Basic Pro-Competition Requirements of the 1996 Act

- Under the guise of switched access charge reform, the Plan overrides the interconnection agreement regime in sections 251/252 of the Communications Act.
- Competitive providers will be forced into uneconomic interconnection arrangements at “Edges” chosen by terminating incumbents.
- The Edge proposal unilaterally eliminates CLECs’ rights to interconnect at any technically feasible point pursuant to Section 251 (c) of the Act.
- In contrast, competitive providers terminating traffic will see current charges paid by incumbents eliminated.

Inter-Carrier Compensation Reform Should be More Focused on Specific Problems

- Because the Missoula Plan is incomplete and inordinately complex, it is impossible to understand all of its requirements and calculate the precise effects on consumers, providers, and the market. Consequently, it will lead to endless disputes, litigation, new arbitrage opportunities, and uncertainty.
- Inter-carrier compensation reform can be largely and more easily accomplished by (1) directly addressing arbitrage opportunities in existing FCC proceedings and (2) permitting states to continue their efforts to drive intrastate charges to interstate levels.